

Case No. A107100

**COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT, DIVISION FOUR**

CHURCH OF SCIENTOLOGY
INTERNATIONAL, A California
nonprofit religious corporation

Plaintiff and Appellant,

vs.

GERALD ARMSTRONG, an
Individual,

Defendant and Respondent.

Appeal Case No. A107100

[Consolidated with Case No.
A107095]

FILED

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Court of Appeals, 1st App. Dist.
DIANA HERBERT

By _____ DEPUTY

On Appeal from the Superior Court of the State of California
County of Marin
Honorable Lynn Duryee

RESPONDENT'S BRIEF

Gerry Armstrong
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INTRODUCTION

Plaintiff and appellant Scientology organization (“Scientology”) appeals from a judgment of the Marin County Superior Court that Scientology states “immunize[s] the defendant [and respondent Gerry Armstrong (“Armstrong”)] from any future liability for breaching a contract he admits having breached well over 200 times, has been adjudicated to have breached 137 times, and which he vows to continue to breach indefinitely in the future.” Appellant’s Open Brief (“AOB”), pg. 1.

Armstrong agrees with Scientology’s interpretation of the meaning and effect of the Marin Court’s judgment. Armstrong has “breached” Scientology’s “contract” tens or hundreds of thousands of times, or more, and he will continue to breach said contract, because it is impossible, and in fact unlawful, for Armstrong to not do so. It is therefore eminently just that the Court acted to immunize Armstrong from liability for the future “breaches” of Scientology’s “contract” that he must commit.

The Marin Court stated in its judgment from which Scientology here appeals: “It would be unconscionable to punish [Armstrong] beyond what the benefit was that was conferred to him.” Scientology’s Exhibits in Support of Petition for A Writ of Certiorari, (“Exs., ____: (Bates stamp page nos.) ____”), Judgment, 18:361. What Scientology is attempting to do here, seeking millions of dollars in “liquidated damages,” and potentially seeking trillions or quadrillions of dollars or more, as will become obvious if this case is ever permitted to be understood, is indeed unconscionable.

What Scientology also seeks, which this Court should not allow, are all the advantages, threat and black propaganda¹ opportunities that such

¹ Black Propaganda, [or] “black PR,” is the term Scientology founder L. Ron Hubbard directed be used and Scientology uses for its policy and practice of destroying a fair game target’s reputation, credibility and life

perpetual “indebtedness” would confer to this organization as a “judgment creditor.” If such astronomical debt and the attendant lifetime of fair game² were not enough punishment, Scientology also seeks in this Court by writ petition, Case No. A107095, consolidated herewith, (“Petition”) to have Armstrong further punished by jailing and fining him for 145 or so

with covert and overt, relentless and pervasive libel and slander. Answer of Gerry Armstrong, Exs.15: 214.

² Scientology founder L. Ron Hubbard ordered, and Scientologists accept as true, that there is a class of citizens called “Suppressive Persons or “SPs,” who are the most evil people in the world, destructive, criminal, and deserving no mercy or rights. Hubbard called Scientology’s policy for treatment of SPs “Fair Game,” and provided examples and types of Fair Game to be applied to SPs in various policy letters or directives. E.g. in his policy letter “Penalties for Lower Conditions, Hubbard wrote:

ENEMY — SP Order. Fair game. May be deprived of property or injured by any means by any Scientologist without any discipline of the Scientologist. May be tricked, sued or lied to or destroyed.

Scientology declared Armstrong to be a “Suppressive Person” right after he left the organization in December 1981 and has considered him an SP and Fair Gamed him ever since. Armstrong’s Respondent’s Appendix (“RApp.____”) Declaration of Gerry Armstrong in Support of Opposition to Motion for Summary Judgment, filed March 9, 2004. RApp.258.

The California Court of Appeal, Second District wrote about Scientology’s Fair Gaming of Armstrong:

Commencing in February 1982, the international Church of Scientology issued a series of “suppressive person declares” in effect labelling Armstrong an enemy of the Church and charging that he had taken an unauthorized leave, was spreading destructive rumors about senior Church officials, and secretly planned to leave the Church. These “declares” subjected Armstrong to the “Fair Game Doctrine” of the Church, which permits a suppressive person to be “tricked, sued or lied to or destroyed ... [or] deprived of property or injured by any means by any Scientologist. ...”

Scientology v. Armstrong (1991) 232 Cal.App.3d 1060, 1067, 283 Cal.Rptr. 917.

“breaches.” This punishment Scientology seeks is especially cruel and repugnant because at trial the Marin Court had vacated these ludicrous jail sentences and fines, finding that Armstrong had already been punished enough.

Granting Scientology the punishment it seeks to subject Armstrong to by this appeal and by writ petition would naturally also set in place the judicial machinery for thousands more jail sentences and fines for thousands more breaches. If Scientology’s seeking to have Armstrong punished beyond what the benefit was that was conferred to him is unconscionable, which it cannot but be, Scientology’s petition and this appeal, seeking exactly such punishment, in spades, are also unconscionable, which indeed they are. Obviously unconscionability is what was envisioned when exceptions were created to the principles of res judicata and collateral estoppel, upon which Scientology bases its efforts to do, and have this Court do, more of the unconscionable. Scientology’s continuing to seek judicial enforcement of what has already been adjudged unconscionable must be unconscionably unconscionable. Scientology’s remedy by law is not to get this Court to impose the punishment Scientology seeks pursuant to its “contract’s” unconscionable clauses, but to submit to a hearing or trial on the circumstances at the time the “contract” was made, its setting, purpose and effect.

Scientology’s actions to deprive Armstrong of his civil rights, by threat, fraud, “contract” and abuse of the Justice System, in which abuse Scientology’s appeal and petition in this Court are now a part, are unlawful, being in violation of U.S. Federal Criminal Civil Rights statutes, specifically 18 USC §§ 241, 242. This Court has the authority and opportunity to now put an end to Scientology’s use of the California Court System to destroy Armstrong’s rights and privileges secured to him by the Constitution and laws of the United States.

Armstrong is not attempting to deprive anyone or any organization of their lawful rights of any kind. Scientology's "contract" is unconscionably one-sided. What Scientology is attempting to do to Armstrong is the product of a criminal conspiracy, in which by "contract" every Scientology or Scientology-related organization, corporation, or entity and all of their directors, officers, employees, volunteers, agents, assigns, and lawyers are "beneficiaries." Mutual Release and Settlement Agreement, Exs., 1:1,2. It would be unconscionable, in fact unlawful, for this Court to negate the immunization from future liability that the Marin Court gave Armstrong, and punish him for his discussion of any criminal conspiracy. Armstrong is discussing the criminal conspiracy that has for twenty-three years actively and continuously targeted and victimized him and sought to deprive him of his lawful rights and privileges. Res judicata and collateral estoppel cannot be used to prohibit and punish the discussion of a criminal conspiracy, which prohibition and punishment result in the unlawful protection, survival and even reward of the conspiracy.

Scientology insists that it is a "church" and a "religion," organized for religious purposes. Armstrong is a religious person, and the "breaches" of Scientology's "contract" for which Scientology wants him punished at the rate of \$50,000 per utterance, plus punish him with jail sentences and fines, are his free exercise of his religious rights guaranteed by the First Amendment to the U.S. Constitution. These communications are inarguably Armstrong's religious expression of his religious beliefs about a religion.

Because for freedom of religion to exist a person must be free to change his mind and his beliefs about a religion, and necessarily therefore change his religious expressions in exercise of his religion and religious beliefs, he cannot lawfully be bound by contract enforced by secular courts to one form of religious expression. Logically, res judicata and collateral

estoppel also cannot be used to bind a person to a particular, judicially ordered, prohibition of his religious expression, for the simple reason that changing his religion and his religious beliefs cannot be lawfully judicially prohibited. To do so is simple religious persecution. The present issue is not identical to whatever was litigated in any prior proceeding for the simple reason that, as Armstrong's history and communications manifestly show, he has, since any such proceedings, changed his religion, his religious beliefs and his expressions of those religious beliefs.

Armstrong as an individual has the same guaranteed right of religious free exercise granted by law to the Scientology enterprise. But Armstrong is also the founder and director of his own church and religion, the Church of Wogs ("CoW"), which has a publicly stated religious purpose of opposing those who persecute wogs. "Wogs" is Scientology's and Scientologists' "theological" term for non-Scientologists, a disparaging word, parallel to "infidels" in Christian scripture. If the Christians persecuted infidels, it is altogether possible that a Church of Infidels would arise, as CoW has arisen as a divine and reasonable response to the persecution of wogs by the Scientologists. CoW is utterly universalist, being akin to the brotherhood of man. It is only Scientology and Scientologists who persecute wogs as wogs, and Armstrong's communications about and in opposition to Scientology and Scientologists are his expressions and free exercise of his wog religion and his wog religious beliefs, and comprise CoW's Scriptures. All of the hundreds, or hundreds of thousands, of "breaches" for which Scientology wants this Court to direct the Marin Court to assess Armstrong \$50,000 each in "liquidated damages," and to jail and fine him, are his religious expressions of his religious beliefs about a religion, and are moreover religious scripture, and completely protected by the First Amendment.

It is inconceivable that this Court would ever consider enforcing some Christian “church’s” “contract” that prevented a person, on penalty of \$50,000 per utterance, plus jailing and fines, from expressing his religious beliefs about his religious experiences in the Christian religion. Armstrong does not believe this Court would consider enforcing such a “contract,” and he has found no instance where such a “contract” prohibiting anyone from expressing his beliefs about Christianity, or even practicing Christianity, was ever concocted, much less judicially enforced, in America.

If this Court would *not* enforce a “contract” that prevented a person from expressing his religious beliefs about his religious experiences with the Christian religion, and from communicating Christian scripture, but *would* enforce a “contract” that prevented a person from expressing his religious beliefs about his religious experiences with the Scientology “religion,” and from communicating his own Church’s Scripture, then this Court assists in the establishment of Scientology as a favored State Religion, which establishment is forbidden by the First Amendment. If this Court *would* enforce “contracts” that prevent people from expressing their religious beliefs about their religious experiences with any or all religions, or prevent people from changing religions, their religious beliefs or their religious expressions about religions, and if such enforcement is in accordance with some law, then that law must have been made in violation of the First Amendment, which specifically prohibits such a law from being made.

All of Armstrong’s religious expressions in free exercise of his religion for which Scientology seeks \$50,000 per utterance, and to further punish him with jailing and fines, and seeks this Court’s imprimatur on such punishment, occurred *outside* California and *outside* the U.S. Armstrong is a Canadian citizen living in Canada. A number of his expressions of his religious beliefs for which Scientology seeks to have him

jailed and fined also occurred in Europe. Even if this Court conceivably has some lawful authority to prohibit, limit or punish someone's free exercise of religion in California, this Court has no such authority to prohibit, limit or punish anyone's religious free exercise in Canada or Europe, or anywhere beyond California. Pursuant to the U.S.'s International Religious Freedom Act of 1998 ("IRFA"), the U.S. President, Congress, Department of State, and U.S. missions around the world are required by law to defend and assist Armstrong's free exercise of religion outside the U.S. and to condemn the actions Scientology is taking, and now asks this Court to abet, to suppress his free exercise of religion outside the U.S. All of Armstrong's utterances constituting his free exercise of his religion, for which Scientology seeks to punish him with the onerous financial penalty of \$50,000 per utterance, and jailing and fines, were made *after* the date of the U.S.'s enactment of the IRFA, which was January 27, 1998.

Ford Greene, Armstrong's lawyer at the April 9, 2004 trial, accepted his representation only the day before trial, did not have time to study the case and the facts and issues therein, and consequently at trial did not present the vital facts that Armstrong's utterances for which Scientology sought to punish him occurred *outside* the U.S.; that these utterances are Armstrong's expression of his religious beliefs protected by the religious exercise clause of the First Amendment; that what Scientology was doing to Armstrong was a gross violation of U.S. civil rights criminal statutes; that the IRFA applied to all Armstrong expressions for which Scientology sought to punish him; and that by the IRFA the U.S. was required to promote and protect such religious expressions. Until 1995, Greene had represented Armstrong in the earlier *Marin Scientology v. Armstrong* cases, nos. 152229 and 157680, which are now consolidated with the case, no. CV

021632, from which this appeal arises, but Greene had not been involved with these cases since 1995.

Scientology has unclean hands in this matter, significantly in its use of its first wrongly obtained contempt order to wrongly achieve the dismissal of Armstrong's appeal in this Court from the summary judgment that Scientology should never have obtained in the first place. Scientology should be denied the use of this Court to pursue the instant appeal and to obtain the writ it also seeks.

To rule in Armstrong's favor in this appeal, involving gargantuan but explicit numbers and sums of money, it is only necessary to do the math.

STATEMENT OF THE CASE

Scientology says that the essential facts in this case are not, and never were in dispute. AOB, 1. This is simply untrue. The essential facts in this case, up to the judgment of Marin Court Judge Gary W. Thomas filed May 2, 1996 (Exs.,7) are provided in the section "Armstrong's History with Scientology," pp. 3-29 in his appellant's opening brief in the appeal Armstrong filed from Judge Thomas' injunction and judgment, *Scientology v. Armstrong*, Case No. A075027, in this Court. That is a prior appeal in the same case, and Armstrong incorporates herein by reference thereto said opening brief ("AOB-A075027") the clerk's transcript on appeal ("CT-A075027"), and all other documents comprising the record in that appeal.

Scientology falsely states, and has been falsely stating for years, that Armstrong fled to Canada after being convicted of contempt by Judge Thomas to avoid jail sentences, e.g.:

To avoid the jail sentences imposed for his contempt convictions, Armstrong fled to Canada, from where he committed the breaches that spawned the instant action.
AOB, 5, and

On June 5, 1997, Judge Thomas issued an order of contempt, finding that Armstrong “willfully disobeyed the Order.” [] Judge Thomas ordered that Armstrong pay a fine of \$1,000 and be confined in the County Jail for two days.[] Armstrong fled the jurisdiction, and on August 6, 1997, Judge Thomas issued a bench warrant for his arrest.

Petition, 6,7.

Armstrong left California and traveled to Canada in January 1997. Without notice to Armstrong of any contempt hearing, Scientology obtained its first contempt order against him, as Scientology here states, on June 5, 1997. Armstrong has stated when and why he left California in many public and sworn statements, e.g.:

I obtained my first internet connection in early January, 1997, while living in San Anselmo, and within a few days discovered that someone had put on their internet web site the submission Scientology had made to the IRS in response to the IRS’s Form 1023 request. The organization, up until that time, had lost all significant legal cases with the IRS, was held to be non-tax exempt, and was facing a huge tax liability. Scientology’s 1023 submission contained sections of black PR on me, a true and correct copy of which, downloaded from the internet, is appended hereto as Exhibit [F]. This 1023 response was the basis of the organization’s obtaining tax exemption for all its associated corporate entities in 1993. I believe that Scientology’s 1023 response was submitted to the IRS in 1991 or 1992. On information and belief, Scientology supreme dictator, or leader, David Miscavige announced in 1993 that when Scientology triumphed in its war on the IRS the organization was facing a billion dollar tax liability. The importance of my earlier litigation and testimony to the IRS in its denial of Scientology’s tax exemption is shown by Scientology’s own statements in the 1023 response:

“the Service has continuously thrust the Armstrong case at us, demanding an explanation.” (Ex.F, 1)

“The IRS CID, however, absorbed Breckenridge’s³ findings as the definitive statement of what Scientology is, and used this decision and the Flynn witnesses who testified at the trial as the nucleus of their investigation.” (Ex. F, 4)

Scientology’s statements about me and my earlier litigation, *Scientology v. Armstrong*, Los Angeles Superior Court Case No. C 420153, are in fact and conclusion false. The depth of Scientology’s black PRing of me in its submission to the IRS is shown by its statement:

“As we shall demonstrate below, all this decision ever involved was Armstrong’s state of mind, which subsequently obtained evidence proved conclusively to be one sordid, sado-masochistic nightmare. Furthermore, Armstrong’s state of mind horror stories have fallen on deaf ears in recent litigation. Relying on Armstrong or the Armstrong decision is wholly unjustified.” (Ex.F, 1)

³ Los Angeles Superior Court Judge Paul G. Breckenridge, Jr. (retired) presided at the 1984 court trial of *Scientology v. Armstrong*, Case No. C 420153. Judge Breckenridge issued a lengthy decision after a lengthy trial, which became the judgment in the case. CT-A075027, 5948-5974. The judgment was affirmed on appeal, *Scientology v. Armstrong* (1991) 232 Cal.App.3d 1060, 283 Cal.Rptr. 917.

Judge Breckenridge stated in his decision:

In addition to violating and abusing its own members civil rights, the organization over the years with its “Fair Game” doctrine has harassed and abused those persons not in the Church whom it perceives as enemies. The organization clearly is schizophrenic and paranoid, and this bizarre combination seems to be a reflection of its founder LRH. The evidence portrays a man who has been virtually a pathological liar when it comes to his history, background, and achievements. The writings and documents in evidence additionally reflect his egoism, greed, avarice, lust for power, and vindictiveness and aggressiveness against persons perceived by him to be disloyal or hostile.

CT-A075027, 5955,5966.

The decision rendered by Judge Breckenridge in that case, along with the California Court of Appeal opinion affirming that decision (Scientology v. Armstrong, (1991), 232 Cal.App.3rd 1060, 283 Cal.Rptr. 917) are appended hereto as Exhibit [G]. I believe that to counter the IRS's use of the decision, Scientology concocted this scheme to black PR me to the IRS, and anyone else the organization could get to listen. Scientology submitted these false statements to the IRS during a time the organization was attempting to judicially silence me with its "settlement agreement," and thus prevent me from responding to its falsehoods. It was also significant to me when I discovered this black PR that Scientology had not produced these statements about me in discovery in this case (Marin SC 152229/157680) when it was before Judge Thomas, even though the IRS 1023 document was relevant and of a type and nature of documents which were ordered produced to me. When I read this black PR in Scientology's statement to the IRS on which its tax exemption is based, and having experienced Scientology's years of fair game, and indeed feeling like I was being fair gamed by Judge Thomas and could never get a fair hearing before him, I immediately decided to escape. I believe that Scientology will do anything to silence me completely and forever. I also believe that Scientology's false submission to the IRS and its obtaining of its tax exemption based thereon constitutes a massive fraud upon the people of not only the US but the world. I therefore had to leave the US, where Scientology could prevent me from correcting this fraud, and have me harmed in many ways to so prevent me, to be in a country where I have legal protection from Scientology's abuse of the justice system and where I could work to correct its fraud.

Declaration of Gerald Armstrong in Support of Opposition to Scientology's application for OSC re contempt, dated January 9, 2001, Exs., 12:123-4.

Section of Scientology's 1992 IRS Form 1023 responses, Ex. F to Armstrong's January 9 declaration. RApp.4-7.

On January 23, 1997, after deciding to leave California, as described above, Armstrong was served with a subpoena for production of documents by defendant Grady Ward in the case of *Religious Technology Center v.*

Ward, U.S. District Court for the Northern District of California, Case No. C-96-20207 RMW. RApp.10. The following day, Armstrong received a letter from attorney Andrew H. Wilson, attorney for Scientology herein, in which Wilson insisted Armstrong not produce the documents Ward had subpoenaed, and threatened Armstrong with prosecution based on Judge Thomas' injunction. RApp.12 Armstrong wrote a declaration dated January 26, 1997 identifying himself and describing his relevant testimony as a subpoenaed witness, his Scientology-related expertise, his own complex legal circumstances, and the Wilson threat that caused Armstrong to write the declaration, and mailed the declaration to the District Court Judge presiding in the *Ward* case, the Honorable Ronald M. Whyte. Armstrong also mailed a copy of the declaration to the attorney of record for the Scientology plaintiff in that case. RApp.13-57. Armstrong has described these events in several declarations in a number of legal proceedings; e.g.:

On January 23, 1997 I received a subpoena for production of documents, a true and correct copy of which is appended hereto as Exhibit [I], from defendant Grady Ward in the case of *RTC v. Ward*, US District Court for the Northern District of California, case no. C-96-20207 RMW. Mr. Ward's subpoena states:

"You are commanded to produce and permit inspection and copying of the following documents or objects []:

All documents and declarations authored by yourself documenting abuse, fraud, and unlawful acts by the Church of Scientology Enterprise or any of its investigators, such as Eugene Martin Ingram." (Ex. I)

On January 24, 1997 I received by fax a letter, a true and correct copy of which is appended hereto as Exhibit [J], from Scientology attorney Andrew H. Wilson, threatening prosecution in the Superior Court if I provide the documents to Mr. Ward as subpoenaed. Mr. Wilson's statement in the second paragraph that my "obligation to produce documents

in response to lawfully issued and served subpoena is unquestioned” I took to be an effort to give plausible deniability to the threat and the clear obstruction of justice contained in the rest of the letter. I understood Mr. Wilson to be saying for Scientology, “We know you have a legal right to produce the subpoenaed documents, but we’re going to prosecute you anyway.” His threat of “further conflict and annoyance” from Scientology unless, as he insisted, I withheld the subpoenaed documents from Mr. Ward is very clear. In response to Mr. Wilson’s threat, I sent the declaration to Judge Whyte, who, I believed, and still believe, was the proper person to be advised of and curtail Scientology’s interference with a witness in the cases before him.

[] Mr. Wilson’s threat that I would be prosecuted for producing documents to Mr. Ward, even though I had been subpoenaed was not the first time Scientology lawyers had made such a threat. When I was served with a deposition subpoena in the Corydon v. Scientology case in the fall of 1989, Scientology attorney Heller threatened me multiple times with being sued if I testified, even though he acknowledged I had been served. Mr. Heller’s threats are detailed in my appellant’s opening brief. (Ex. A, 11-13) In my opinion, Scientology’s and its lawyers’ misuse of the “settlement agreement” and the Injunction in order to obstruct justice, even beyond how these documents on their face obstruct justice, demonstrates that the intent of the documents and their creators is unlawful.

Exs.12:126-127.

In his declaration of January 26, 1997, Armstrong stated why he was sending it to Judge Whyte:

On January 23, 1997 I received in the mail from Grady Ward a subpoena, a true and correct copy of which is attached hereto as Exhibit [T], for production of documents in his case.

[] On January 24 I received from attorney Andrew H. Wilson a fax letter, a true and correct copy of which is attached hereto as Exhibit [U], threatening prosecution in Armstrong IV if I provide documents to Mr. Ward pursuant to his subpoena. This letter is frightening to me, and supports why I am sending this declaration directly to the Court, and why the “settlement agreement” and the Thomas order are

illegal. Mr. Ward does not have the time to wait for my testimony until Scientology's motion for protective order is heard before he must file this testimony. In my opinion, that is precisely why Mr. Wilson has sent his threat letter.

RApp.55; and Declaration of Gerald Armstrong in Support of Opposition to Motion for Summary Judgment, dated March 2, 2004, RApp.267,268.

On February 19, 1997, following Armstrong's moving to Canada, Scientology filed an application for an OSC re contempt in Marin Superior Court seeking to have Armstrong punished for sending Judge Whyte his declaration concerning attorney Wilson's January 24, 1997 threat.

RApp.13-57. Armstrong was never served with Scientology's application. He recently obtained from the Office of the Clerk of the Marin County Court a copy of the Declaration of Andrew H. Wilson in Support of Ex Parte Application for Order to Show Cause Re Contempt, dated February 14, 1997, and filed February 19, 1997. RApp.58-62

Nowhere in his February 14 declaration does Wilson mention Armstrong's having been subpoenaed, or Wilson's threatening letter of January 24 to Armstrong, or the reason Armstrong stated in his January 26 declaration to Judge Whyte for sending his declaration: Wilson's clear and unlawful threat to Armstrong, a subpoenaed witness in the *Ward* case.

Wilson states in his February 14 declaration:

14. Armstrong's Declaration consists of a verbose regurgitation of every imagined wrong done to Armstrong, and a host of other "victims," by CSI and its affiliates since the late 1970s. In it, Armstrong states that he is sending the Declaration to Judge Whyte directly so as not to violate the Injunction. Declaration at ¶10. Armstrong has concluded that he can properly send the Declaration to Judge Whyte because he is only prohibited from assisting persons litigating against CSI and affiliates, and that the Declaration is provided to assist Judge Whyte to assist him in "judging litigations involving the orders 'beneficiaries'." RApp.61.

This mischaracterizes what Armstrong actually stated in para.10 of his January 26 declaration:

10. This order does not, however, prohibit me from voluntarily assisting a person judging litigations involving the order's "beneficiaries." I believe that the United States District Court is a "governmental organ or entity" excluded from the prohibitions of the order. (See, Ex. A, 8:1,2; 6,7) I am therefor providing the original of this declaration to the Court. I also believe that it would be improper to send this declaration to the Court in secret, thus I am sending copies to the parties or their counsel.

RApp.17. As Armstrong stated in his January 26 declaration, the injunction specifically excluded governmental organs or entities from the class of persons which the injunction prohibited him from voluntarily assisting. Exs., 5:91,92, paras. nos. 1,2,3.

Wilson states in his February 14, 1997 declaration:

5. The Honorable Ronald Sohigian entered the Preliminary injunction in late May, 1992. Less than a month later, I was questioning Mr. Armstrong at a deposition when he testified on his intention to ignore the settlement agreement and Judge Sohigian's Order:

A. When, I mean, I have, I have absolutely no intention of honoring that settlement agreement. I cannot. I cannot logically. I cannot ethically. I cannot morally. I cannot psychically. I cannot philosophically. I cannot spiritually. I cannot in any way. And it is firmly my intention to not honor it.

RApp.59. Armstrong's deposition testimony is very clear that he is testifying about Scientology's "contract" and *not* about the preliminary injunction entered by Los Angeles Superior Court Judge Ronald Sohigian. Wilson is fibbing. RApp.9

Wilson states in his February 14, 1997 declaration:

16. While the preliminary injunction which preceded the Order was in effect, Armstrong willfully disobeyed it on

numerous occasions. This gave rise to an earlier Order To Show Cause Re Contempt, which was heard in December 1994 by the Honorable Diane Wayne. I represented CSI at that hearing. Armstrong admitted the violations and pled for mercy from the court. Judge Wayne discharged the contempt but admonished Armstrong to conduct himself appropriately in the future.

RApp.61. This is false. The May 28, 1992 “preliminary injunction” was much narrower than Judge Thomas’ “permanent injunction” and Armstrong willfully violated it on *no* occasion. Order, CT-A075027, 91-94. Los Angeles Superior Court Judge Diane conducted a hearing on Scientology’s OSC re contempt against Armstrong on July 28, 1994, and issued her order denying the OSC the next day. Armstrong at no time violated the preliminary injunction, and at no time “admitted the violations” as he had committed none. In her order, Judge Wayne discharged the OSC and Armstrong, and said not one word admonishing Armstrong for anything. CT-A075027, 7499-501. There was no later hearing conducted by Judge Wayne in December 1994.

On February 18, 1997 Judge Thomas issued an OSC re contempt, which was never served on Armstrong. Judge Thomas signed an order of contempt, filed June 5, 1997, finding Armstrong in contempt of court for sending his January 26, 1997 declaration to Judge Whyte, and punishing Armstrong with a fine of \$1,000.00 and 48 hours in jail. Exs.8:100. There is no mention in the order of Ward’s subpoena to Armstrong, Wilson’s letter of January 24 to Armstrong, or the actual reason Armstrong stated in his January 26 declaration for sending his declaration to Judge Whyte: Wilson threatening Armstrong after he was served with a subpoena in the *Ward* case.

The June 5, 1997 order states:

5. ARMSTRONG willfully disobeyed the order. On or about January 26, 1997, ARMSTRONG sent a document entitled

DECLARATION OF GERALD ARMSTRONG to United States District Judge Ronald M. Whyte. Judge Whyte was at the time presiding over three cases in which the plaintiff is RTC. In the Declaration, ARMSTRONG recites his understanding that he was prohibited from sending such a Declaration directly to litigants and states that he is instead sending it directly to Judge Whyte in the hopes of influencing his decision on a pending matter. This evidences ARMSTRONG's willful disobedience of the Order and Judgment.

Exs. 8:100.

Nowhere in his January 26, 1997 declaration does Armstrong state that he sent it directly to Judge Whyte in the hopes of influencing his decision. The only reason why Armstrong wrote his declaration and sent it to Judge Whyte was to report Wilson's threat to Armstrong, a subpoenaed, knowledgeable witness in the *Ward* case, over which Judge Whyte presided. Armstrong did request Judge Whyte to prohibit Scientology from interfering with him as a witness, but that request too was made only because of Wilson's threat. RApp.57

On or about August 25, 1997, while living in Canada, Armstrong timely filed his opening brief in the appeal he had taken from the Marin Court injunction. AOB-A075027.

About November 18, 1997 Scientology filed a motion to dismiss Armstrong's appeal, claiming that, by Judge Thomas' June 5, 1997 contempt order punishing Armstrong for reporting the Wilson threat by declaration to Judge Whyte, Armstrong was a fugitive from justice and therefore should be denied any aid from the Court. Motion-A075027. Scientology's motion to dismiss Armstrong's appeal was signed by attorney Wilson and supported by a declaration of Wilson dated November 18, 1997. Wilson Declaration-A075027.

Nowhere in the motion, memorandum of points and authorities ("Memo") or his declaration does Wilson mention Ward's subpoenaing

Armstrong, Wilson's letter of January 24, 1997, or the reason Armstrong stated in his January 26 declaration to Judge Whyte for sending the declaration: Wilson's threatening of Armstrong, a subpoenaed witness in the *Ward* case.

Scientology states in its motion to dismiss:

The court below held appellant Gerald Armstrong in contempt of court for willful violation of the permanent injunction which is the subject of this appeal and punished Armstrong by imposing a fine of \$1,000.00 and a term of confinement in the County Jail for a period not to exceed 48 hours. Rather than discharging the contempt order of the Superior Court, or properly noticing a timely appeal from it, Armstrong fled the United States and is prosecuting this appeal from Canada. The appeal should therefore be dismissed.

Motion-A075027, Memo, 1. As shown, Scientology obtained its order of contempt June 5, 1997. Armstrong had left California in January.

Scientology repeats the same falsehood later in its motion to dismiss Armstrong's appeal:

Armstrong did not appeal the Order of Contempt and the time for filing a notice of appeal of that Order has passed. ¶ Rather, in the face of the Order of Contempt, Armstrong fled the United States. He has not paid the \$1,000 fine and he has not submitted to confinement in the county jail.

Motion-A075027, Memo.5. Armstrong could not have appealed because he was not served with the contempt order. He left the US months before Scientology obtained the contempt order, not in the face of it.

Wilson states in his November 18, 1997 declaration:

[O]n January 26, 1994, Armstrong submitted a 45 page declaration against the Religious Technology Center ("RTC"), one of the named beneficiaries of the 1986 Settlement Agreement. He sent this declaration, containing material directly violating the agreement and Order, to the Hon. Ronald M. Whyte [] Accordingly, CSI moved for an

Order to Show Cause why Armstrong should not be held in contempt of court for his actions. Rather than responding to the OSC Armstrong fled the country, moving to Canada where, to the best of my knowledge, he currently resides. Armstrong's flight required that we serve the Order to Show Cause by publication.

Wilson Declaration-A075027, p. 6. Again this is false. Armstrong did not know of the OSC until Scientology filed its motion to dismiss his appeal in this Court. Armstrong was in Canada before Scientology applied for its OSC so he could not have fled “rather than responding.”

Wilson states in his November 18, 1997 declaration:

In settling this litigation, it was the Church's desire to end its relationship with Armstrong once and for all. In order to accomplish this, the Church insisted [that Armstrong end his] voluntary support to anti-Scientology litigants [,] return to the Church documents which he had stolen and [] refrain from discussing with third parties his experiences with the Scientology religion and to keep confidential all terms of the settlement itself. [] In May, 1992, [] the Hon. Ronald Sohigian entered a preliminary injunction which prohibited Armstrong from further violations of the key provisions of the settlement agreement.

[] In June, 1992 I took Armstrong's deposition in this case. During the deposition, in the face of Armstrong's assertions that he did not consider himself restrained in any way by the contract which he had entered with CSI in 1986, I questioned him as to whether he intended to obey the order of Judge Sohigian. Armstrong responded:

A. When I mean, I have, I have absolutely no intention of honoring that settlement agreement.

Wilson Declaration-A075027, p. 2-3.

In the deposition section Wilson quotes, he did *not* question Armstrong about Judge Sohigian's order, and Armstrong did *not* discuss or refer to that order. Wilson asked Armstrong about the “settlement agreement” and Armstrong answered about the “settlement agreement.”

Wilson Declaration-A075027, p. 3, Exhibit A thereto, excerpt of Armstrong deposition, dated June 24, 1992 Also, RApp.8,9.

Armstrong had “stolen” no documents. Judge Breckenridge found the justification for Armstrong’s conduct manifest, and the Scientology plaintiffs’ causes of action for conversion must fail. CT-A075027, 5959. Scientology repeats the false claim of “stolen” documents in its motion to dismiss the appeal. Motion-A075027, Memo.2.

Judge Sohigian’s May 28, 1992 preliminary injunction did *not* prohibit Armstrong from further violations of the “key provisions of the settlement agreement” that Wilson identifies, but prohibited Armstrong only from voluntarily assisting *claimants* against Scientology. The preliminary injunction did not prohibit Armstrong from voluntarily assisting *defendants* against Scientology, or from discussing his experiences with Scientology or the settlement’s terms. CT-A075027, 91-94. The prohibitions contained in Scientology’s “contract” were much broader, and contained conditions that are unlawful on their face; e.g., avoidance of service of process, Exs.1: 10-11, para. 7H; non-assistance to government agencies, *Id*, 13, para. 10.

On December 17, 1997, Armstrong filed a request in this Court for extension of time, requesting “an extension until December 30, 1997 to file his opposition to Scientology’s motion to dismiss this appeal.” Request-A075027. This Court erroneously considered Armstrong request for an extension of time to be his “opposition to the motion to dismiss” and dismissed his appeal on December 23, 1997. Order, Exs.7:97.

Armstrong appended to his request for extension, in order to demonstrate his diligence, good faith and intention to file an opposition, a declaration he had written to support what would be the opposition he requested an extension of time to file. Armstrong does not possess that declaration, but is including in his respondent’s appendix a copy of his

declaration dated December 27, 1997 that was written to support the opposition for which he requested time to file, and which can be compared to the declaration appended to said request that was filed. RApp.84-132.

Prior to this Court's dismissal of Armstrong's appeal, he communicated by telephone with a clerk in this Court, and understood from the clerk that his extension request was granted. Armstrong spoke to the clerk by telephone on or about December 27 to advise the Court that his opposition would be filed by December 30, and at that time learned from the clerk that the appeal had been dismissed, and that he could not file his opposition. Armstrong was devastated with this development, and coincident with this shocking ruling was for a period of a week or more extremely ill. When he recovered, because he was denied the aid of the California Courts to correct the injustice and abuse in those Courts that Scientology was perpetrating, Armstrong believed he had no choice but to expose and combat that injustice and abuse without the Courts' aid, and seek justice in the international court of public consciousness. Armstrong has done so ever since, as shown by his postings to the Internet newsgroup alt.religion.scientology, for which Scientology wants him punished. Appellant's Appendix ("AApp."), 96-399. See, e.g., Armstrong's May 22, 1998 posting, which is a declaration Armstrong executed May 6, 1998 and filed in *Armstrong v. Miscavige, et al.*, U.S. District Court, District of Nevada, No. CV-N-97-00670-ECR (RAM) in response to Scientology's motion to dismiss, which was supported by a declaration of Andrew Wilson.

44. I am more certain than ever that the orders of the Marin Superior Court, upon which the Scientology defendants herein rely to claim that I am a fugitive from justice, and to support their motion to dismiss this case, impermissibly violate the US Constitution's guarantees of First Amendment freedoms, are against public policy and illegal. I can no more be legally judicially compelled to not

mention L. Ron Hubbard, Scientology or my experiences in that "religion" than another US citizen can be legally judicially compelled to not mention, on penalty of fine and imprisonment, God, Jesus Christ, the Christian religion, or the person's religious experiences in that religion. I do not believe that the right to discuss a religion or religious experiences or reform a religion can legally be contracted away or judicially prohibited and punished. I am certain that the Marin Court's order, which Scientology interprets to permit that organization and its agents to say or publish whatever they want about me, and prohibit me from responding or punish me with fines and imprisonment if I do respond, is against public policy, obstructive of justice, and illegal. This interpretation by Scientology is articulated in a letter dated February 25, 1997 from attorney Wilson to my attorney George Abbott, a true and correct copy of which is appended hereto as Exhibit M. Mr. Wilson states in that letter that I am not free "to communicate orally, in writing or by any other legal means available to [me] to fully correct [] alleged lies and distortions." (Ex. M p.1, para 3). The Scientology organization leaders and their agents have subjected me for over fifteen years to a massive international black PR assault on my character, credibility, safety and peace. I cannot believe that I can, in this country, be legally prohibited from defending myself. I cannot believe that our justice system will continue to permit this modern day slavery.

AApp.7:109-110.

About December 16, 1997, while its motion to dismiss Armstrong's appeal was pending, Scientology filed an application for an OSC re contempt in the Marin Superior Court seeking to have Armstrong punished for Internet postings he made in Canada, an appearance on UK television, and media interviews in Germany. RApp.71-83. Said application, signed by attorney Wilson, was supported by a declaration of Wilson dated December 1, 1997. RApp.64-70.

In his December 1, 1997 declaration, Wilson repeats the same falsehoods he had used to obtain Scientology's first contempt order against Armstrong and the dismissal of Armstrong's appeal.

The Honorable Ronald Sohigian entered the Preliminary Injunction in late May, 1992. Less than a month later, I was questioning Mr. Armstrong at a deposition when he testified of his intention to ignore the settlement agreement and Judge Sohigian's Order:

A. When, I mean, I have, I have absolutely no intention of honoring that settlement agreement.

RApp.65.

While the preliminary injunction which preceded the Order was in effect, Armstrong willfully disobeyed it on numerous occasions. This gave rise to an earlier Order To Show Cause Re Contempt, which was heard in December 1994 by the Honorable Diane Wayne. I represented CSI at that hearing. Armstrong admitted the violations and pled for mercy from the court. Judge Wayne discharged the contempt but admonished Armstrong to conduct himself appropriately in the future.

RApp.66.

Mr. Wilson also states in his December 1, 1997 declaration:

I am informed and believe that, beginning in approximately 1990, Armstrong fraudulently transferred substantially all of his assets and began repeatedly breaching almost every covenant he made in the Agreement.

RApp.65. Armstrong made no fraudulent transfer. Wilson and other people serving Scientology's purposes have disseminated this falsehood continuously for over a decade. See, e.g., Internet posting of December 19, 2002, in Exhibit D to Armstrong declaration of March 2, 2004.

Armstrong hid his money by giving it away.

[...]

Gerry Armstrong tried a variety of maneuvers (including establishing a bogus corporation) in an effort to protect the proceeds he received in his settlement with the Church of Scientology.

When that didn't work, he transferred the proceeds to others. That's when he began his "witty" ruse that he was a Prophet of God [R].

RApp.145,

In fact, on June 13, 1997, after a hearing on Scientology's application for writ of attachment to seize a house that had been Armstrong's years before, Judge Thomas had ruled that there was no fraudulent transfer.

Plaintiff's application for a right to attach order and writ of attachment is denied. Plaintiff has not established the probable validity of its claim that defendant transferred the subject property to Walton "[w]ith actual intent to hinder, delay, or defraud" plaintiff. Plaintiff's own evidence shows that defendant never believed the settlement agreement was enforceable and thus would not have expected plaintiff would be able to recover under the liquidated damages provision.[] thus, this supports the conclusion that defendant gave away his property because of his calling from God rather than to avoid his obligations to plaintiff.

RApp.63. Scientology never appealed this ruling, it has been final for seven years, and Scientology has done nothing to prosecute its fraudulent fraudulent conveyance lawsuit ever since. Wilson knew of Judge Thomas' June 13, 1997 ruling when Wilson wrote his December 1, 1997 declaration because, as the ruling shows, Wilson was present in court when the ruling was made. RApp.63.

Scientology concludes its December 1, 1997 application with a demand that Armstrong be prosecuted criminally.

Further, upon finding Armstrong in contempt under Code of Civil Procedure § 1209, et seq., referral to the District Attorney for misdemeanor prosecution under Penal Code § 166(4) is also necessary to curtail Armstrong's continued defiance of this Court's authority.

RApp.80,81.

As Armstrong's May 22, 1998 posting to the Internet, quoted *supra*, shows, Wilson submitted the same set of falsehoods in the Nevada litigation as Wilson had used to have Armstrong punished for contempt of court and have his appeal dismissed.

22. CSI and RTC also supports their motions to dismiss with a declaration executed by attorney Andrew Wilson which contains a substantial number of untruths. Mr. Wilson states:

"In late January, 1997, I learned of actions by Mr. Armstrong that I believed were clear violations of the [October, 1995] Injunction. Armstrong sent to the Hon. Ronald M. Whyte, the United States District Judge presiding over three cases in which the plaintiff is Religious Technology Center ("RTC"), a beneficiary of the Injunction, a letter and lengthy declaration disseminating information denouncing CSI and its related entities. ¶ This was not Armstrong's first violation of the Injunction. Prior to that, Armstrong repeatedly and wilfully disobeyed the preliminary injunction which preceded the permanent injunction. (Wilson Decl. 2:20-26) I at no time disobeyed the "preliminary injunction." Between 1992 and 1994 Scientology attempted to have me sentenced and jailed for several non-existent "violations" or "contempts" which its agents manufactured. All of the alleged contempts were discharged, and Mr. Wilson, who participated in the contempt proceedings, is fully aware of this fact.

23. I sent the declaration and letter, true and correct copies of which are appended hereto as Exhibit D, to Judge Whyte to properly report an improper threat received from attorney Wilson. I had been subpoenaed by defendant Grady Ward to produce documents in the case of RTC v. Ward, US District Court for the Northern District of California, case no. C-96-20207 RMW. A true and correct copy of the subpoena is appended hereto as Exhibit E. The following day I received from Mr. Wilson a letter, a copy of which is appended hereto as Exhibit F, threatening "further conflict and annoyance" between me and Scientology if I produced the subpoenaed documents. I considered and still consider Wilson's threat to be obstructive of justice and so reported it to Judge Whyte. I had been threatened by Scientology lawyers on a number of other occasions when I had earlier been subpoenaed as a witness in Scientology-related litigations.

AApp.7:103, 4.

On February 11, 1998, Judge Thomas signed a contempt order against Armstrong, for 13 violations of the injunction, consisting of 8

Internet postings in Canada and 5 media interviews in Europe. Judge Thomas punished Armstrong with a sentence of 2 days in jail and a fine of \$200 for each of the violations, and ordered him to surrender by February 10, 1998. The contempt order was filed February 20. Exs.10:103-7.

On or about November 13, 2000, Scientology filed an application for an OSC re contempt, signed by Wilson and supported by a declaration of Wilson dated November 13, 2000, seeking to have Armstrong punished for 131 Internet postings he made in Canada, two talks in Florida, and a media interview in Denmark. RApp.154-165. In the application and his declaration, Wilson repeats the falsehoods he had used to obtain the earlier contempt orders and the dismissal of Armstrong's appeal: that Armstrong had fraudulently transferred all of his assets RApp.157,162; that Armstrong's sending his declaration to Judge Whyte about Wilson's threat was a violation of Judge Thomas' injunction RApp.157, 163; that Armstrong fled California in response to the first contempt judgment and moved out of California to avoid arrest RApp.157; that Armstrong testified in deposition that he intended to ignore Judge Sohigian's preliminary injunction RApp.162. Wilson and Scientology also falsely stated: "There was no appeal from the Injunction." RApp.159.

In the November 13, 2000 application, Wilson and Scientology again urged the Marin Court to punish Armstrong criminally.

Armstrong has willfully treated this Court's authority with such callous disregard that he should be criminally sanctioned by fine and imprisonment under Code of Civil Procedure § 1218.
RApp.160.

Armstrong filed an opposition to Scientology's application for an OSC dated January 9, 2001 supported by a declaration also dated January 9, 2001. In his declaration, Armstrong refuted Wilson's and Scientology's old repeated false statements in their November 13, 2000 application and

declaration, refuted newly made false statements in their papers, and emphatically rejected the notion that Judge Thomas' injunction and contempt orders are lawful. Exs.12:110-140.

On July 12, 2001, Marin Judge Vernon F. Smith, who had inherited the case from Judge Thomas who had retired, signed an order of contempt, filed July 13, 2001, ruling that the injunction was valid and enforceable and finding Armstrong in contempt of court, but not imposing a specific punishment at that time. Exs.13:141-144.

On April 2, 2002 Scientology filed another lawsuit in Marin Superior Court, CV 021632, against Armstrong, Robert Minton and the Lisa McPherson Trust, seeking \$10,050,000 from Armstrong for 204 "breaches" of Scientology's "contract." The 204 claimed "breaches" included the 131 Internet postings identified in Scientology's November 13, 2000 application for OSC, plus 73 "new" "breaches." Exs.14:145. Armstrong, then living in Germany, filed his answer November 19, 2002. Exs.15:211-295.

On November 17, 2003, Scientology filed a motion for summary judgment, claiming there was no triable issue of fact because Armstrong had admitted committing the "breaches," and seeking \$50,000 for each "breach."

On March 9, 2004 Armstrong filed his opposition to the summary judgment motion, supported by his declaration dated March 2, 2004. RApp.256-299. Armstrong's evidence in support of his opposition included: Ex. A, his complaint report executed February 16, 2004 (RApp.168-255) to the U.S. Department of Justice Civil Rights Division identifying a number of Federal crimes being committed against him and others by "beneficiaries" to the "contract" that Scientology wants this Court to enforce; Ex. B, L. Ron Hubbard's policy letter and "religious scripture" "Battle Tactics" (RApp.1-3) that Armstrong had studied inside Scientology,

which orders aggressive, criminal acts and “war” against Scientology's "enemies" such as Armstrong;” Ex. D, excerpt of Internet postings (RApp.133-153) black PRing Armstrong made by individuals serving Scientology’s interests; Ex. F, the decision dated June 20, 1984 in *Scientology v. Armstrong*, Los Angeles Superior Court case no. C 420153 (CT-A075027, 5948-5974); Ex. G, subpoena (RApp.10-11) served on Armstrong January 23, 1997 in the *Ward* case; Ex. H, Wilson's letter (RApp.12) of January 24, 1997; Ex. I, Armstrong's declaration (RApp.13-57) dated January 26, 1997, sent to the judge in the *Ward* case; and Armstrong’s resume (RApp.166,167)

On March 17, 2004, Scientology filed a motion to strike Armstrong’s evidence in support of his opposition to Scientology’s summary judgment motion.

On March 23, 2004, Marin Superior Court Judge Lynn Duryee denied Scientology’s motion for summary judgment. RApp.300. Scientology did not appeal.

On April 2, 2004 Judge Duryee conducted a hearing Scientology’s motion to strike, and issued an order denying the motion. RApp.301-303.

On April 9, 2004 the trial of Scientology’s complaint against Armstrong proceeded, resulting in Judge Duryee’s judgment awarding Scientology \$500,000 in liquidated damages, but rejecting Scientology’s claim of \$50,000 for each of the 131 or more “breaches” as unconscionable.

Mr. Armstrong received a benefit under the settlement agreement of \$800,000. And I think it would be unconscionable to punish him beyond what the benefit was that conferred to him. He's previously been sanctioned in the sum of \$300,000.

So my thought is to enter judgment for the plaintiff, on the admitted violations, of \$500,000.

RT, Exs.16:350.

Judge Duryee also discharged the contempt punishment against Armstrong ordered in 1997 and 1998 by Judge Thomas.

And in my view the bench warrants that have been previously issued on the contempt citation, which call for, looks like, around 30 days in jail, I would discharge the jail and the contempt citation, the contempt punishment, with the entry of the judgment of \$500,000.

Exs.16:350-351

Attorney Wilson then pleaded with the Court to sentence Armstrong for the July 13, 2001 order of Judge Smith finding Armstrong in contempt for 131 or more violations of the injunction but not imposing specific punishment.

Mr. Wilson: Right. So if I can take a third bite at the apple.

Sentence him on that one. Something.

Exs.16:356. Judge Duryee then sentenced Armstrong, and deemed the punishment served by Armstrong's appearance in court.

The court: All right.

So on the order of contempt issued July 13th, 2001, the court sentences you to five days in jail and a fine of \$1,000. The fine is -- the fine is concurrent with the judgment that's been rendered in this action and the jail time is deemed served by your appearance in court here today.

Exs. 16:357

On May 20, 2004 the Marin Court issued its Order Granting Plaintiff's Motion for Judgment. Exs.18:361. On the same date, the Court also issued an Order Re Sentences for Contempt discharging the sentences imposed by Judge Thomas, and deeming the sentence on Judge Smith's July 13, 2001 contempt order served by Armstrong's appearance. Scientology then appealed.

In its opening brief, signed by Wilson, Scientology twice states as fact that Armstrong was convicted of "criminal contempt."

This appeal is related to, and has been consolidated with, Church of Scientology v. Superior Court, Case No. A107095.

That matter arises from the trial court's sua sponte vacation and discharge of two sentences for criminal contempt previously imposed by the Honorable Gary Thomas

AOB, 1

Armstrong was twice convicted of criminal contempt in proceedings before Judge Thomas for violating the permanent injunction. Exs., Tabs 8 and 10. To avoid the jail sentences imposed for his contempt convictions, Armstrong fled to Canada

AOB, 5

In its writ petition, also signed by Wilson, Scientology 3 times states that Armstrong was guilty of “criminal contempt.”

The Court did not explain how a fine for criminal contempt payable to the court can be "concurrent" with a civil judgment for damages payable to a party. Nor did it explain how an appearance in court is the equivalent of serving a five-day jail sentence.

Petition, 12

19. The Superior Court committed clear legal error in holding that a compensatory damages judgment in the Related Action for different violations of the contract and permanent injunction can satisfy orders of criminal contempt in the Action.

Petition, 13

In the First and Second Orders of Contempt, Judge Thomas found Armstrong guilty of contempt and sentenced him to fines totaling \$3,600 and 28 days of confinement. In the Third Order of Contempt, Judge Duryee sentenced Armstrong to a \$1,000 fine and five days of confinement. These sentences were criminal contempt sanctions

Petition, 19

Wilson cannot but know that the contempt orders in this case are not for criminal contempt but for *civil contempt*. Wilson himself twice urged the Marin Court in the applications for an OSC re contempt to refer Scientology's contempt allegations to the District Attorney for criminal prosecution, which on both occasions the Court did not do. RApp.81,160. The bench warrants that followed the contempt orders that Wilson calls

“criminal contempt” were prepared by him and state very clearly that the matters are “civil.” Exs.9:101; Exs.11:108.

ARGUMENT

I. Law compels a trial

California Civil Code §1670.5, is the governing law in this case, and very clear:

(a) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.

(b) When it is claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose, and effect to aid the court in making the determination.

There is no doubt whatsoever that Judge Duryee found the contract or its clauses unconscionable. The essence of and reason for her judgment is unconscionability. The reason she gave for her judgment, in 2004, as unconscionability applied to the contract’s liquidated damages provision, was that, in this case, liquidated damages to Scientology beyond what Scientology had given Armstrong in settlement of his lawsuit and other claims against Scientology, in 1986, would be unconscionable. In this case,

Scientology was seeking liquidated damages 20 times the monetary amount given to Armstrong to settle his claims up to December 1986.⁴

Judge Duryee linked what she meant by unconscionability to the liquidated damages' unreasonableness.

The Court: Well, liquidated damages have to be reasonable. I think it's unreasonable to go beyond the amount that was paid to Mr. Armstrong.

Exs.16:351.

Judge Duryee acted, as provided by CCC §1670.5, to limit the application of Scientology's unconscionable liquidated damages clause as to avoid the unconscionable result of Armstrong being assessed monetary damages for millions or trillions of dollars or more, lawsuit after lawsuit, for the rest of his life.

Scientology obviously does not like Judge Duryee's emphatic judgment that its "contract," by which it had hounded Armstrong around the world, bankrupted him and threatened him for 18 years, is unconscionable. Indeed, Scientology should be very concerned, because Judge Duryee's judgment not only ends Scientology's drive for judicial enforcement, but exposes all of what Scientology and its beneficiaries, such as attorney Wilson, have done to enforce the unconscionable "contract" or

⁴ Because the distribution of the lump sum that Scientology gave to attorney Michael Flynn in settlement of all of the Flynn-related cases against Scientology, including Armstrong's, was unknown to Scientology, Armstrong's position is that therefore the amount he was given by Flynn out of that lump sum to settle with Scientology is irrelevant; i.e., Scientology's "contract" to be lawful had to be lawful when signed if Armstrong had been given \$800,000 or \$8. What Armstrong had actually been given to dismiss his case against Scientology and release it and a host of beneficiaries from all claims up to the date he signed was about \$515,000. Thus 20 times the benefit that was conferred to Armstrong is \$10,300,000, which is only five "breaches" more than what Scientology was seeking in this case, \$10,050,000. This sum is *actually* 19.515 times what Armstrong received.

otherwise unconscionably shudder Armstrong into silence. But Scientology is not going about undoing Judge Duryee's judgment that its "contract" is unconscionable in the way prescribed by law.

Since it appeared to Judge Duryee that the contract not only *may* be unconscionable but *is* unconscionable, and Scientology desires to invalidate that judgment of unconscionability, Scientology must avail itself of the evidentiary hearing that it is to be afforded by CCC §1670.5. Scientology must present evidence of the circumstances at the time the "contract" was made that demonstrate that its unconscionable clauses were not then unconscionable. Armstrong must be afforded such an evidentiary hearing to demonstrate that the unconscionable clauses that Judge Duryee found to be unconscionable *were* indeed unconscionable at the time the "contract" was made.

CCC §1670.5 requires that to challenge the judgment of unconscionability Scientology must present evidence as to the commercial setting at the time the "contract" was made, its purpose and effect. The time when Judge Thomas, years later, signed his summary adjudication orders finding the unconscionable "contract" "reasonable" and "enforceable" is not relevant to the determination of the reasonableness or unconscionability of the "contract" at the time it was made, except as an *effect* of the unconscionable "contract." Obviously, to assist the Court in determining the effect of Scientology's unconscionable contract, there exists now 18 years of evidence of that effect, which includes Judge Thomas' actions and orders enforcing that unconscionable "contract." Thus a later judgment of unconscionability as to the "contract" must be an automatic exception to the application of collateral estoppel and res judicata to Judge Thomas' judgment. Scientology, citing *Hong v. Somerset*, 161 Cal. App. 3d 111 (1984) admits as much.

Moreover, the reasonableness of a liquidated damages provision is determined as of the date of the execution of the contract, not at the time of the breach, and certainly not at the time of a subsequent judgment finding breach.

AOB, 15

Scientology is attempting to improperly avoid submitting to an evidentiary hearing on the circumstances at the time the “contract” was made, which is Scientology’s “remedy” provided by law, by getting this Court to overrule the Marin Court’s judgment of unconscionability. This Court cannot overrule the judgment of unconscionability, however, because this Court is not the trier of fact as to the circumstances at the time the “contract” was made, concerning which no evidence has yet been adduced because there has been no hearing.

As afforded by CCC §1670.5, Armstrong himself requests and hereby submits to an evidentiary hearing on the “contract’s” commercial setting, purpose, and effect to aid the trial court in making any determination that remains to be made as to the “contract’s” unconscionability. From the day in 1986 when he was pressured and deceived into signing Scientology’s unconscionable “contract” Armstrong has considered that “contract” unconscionable. From the day in 1992 when Scientology served on him its first lawsuit to enforce its unconscionable “contract” Armstrong has sought an evidentiary hearing, indeed a trial, on the circumstances at the time the “contract” was made in order to demonstrate its unconscionability. From the days in 1995 when Judge Thomas made his summary adjudication rulings denying Armstrong a trial on the circumstances at the time the unconscionable “contract was made” Armstrong has protested that the denial of the trial that he sought was improper. From the day that this Court improperly dismissed Armstrong’s appeal from Judge Thomas’ denial of the trial Armstrong sought Armstrong has protested that improper dismissal. Judge Duryee’s unconscionability

judgment has proven Armstrong right, and CCC §1670.5 now gives him, and Scientology, the evidentiary hearing, or trial, that he was previously improperly denied.

II. The Marin Court's Judgment of Unconscionability is Reasoned and Sound

Scientology says:

Armstrong was collaterally estopped to challenge the liquidated damage clause's reasonableness and enforceability, especially after the trial court rejected the defenses by which Armstrong sought to raise such precluded issues.

AOB, 10. That assertion is arguable, but does not have to be argued because it does not describe what happened at trial. Judge Duryee *herself* challenged the reasonableness and enforceability of the liquidated damages clause, and found that clause unconscionable.

Contrary to what Scientology would like this Court to believe, Judge Duryee's finding that Armstrong had no defenses, that his affirmative defenses had all been lost to him by Judge Thomas' grant of Scientology's summary adjudication motions, while she also found the "contract's" liquidated damages clause unconscionable, supports and reinforces her unconscionability judgment. If Scientology's "contract" is unconscionable, which it has been adjudged to be and therefore must always have been, then the earlier elimination of Armstrong's defenses to the enforcement of the unconscionable "contract," by the "contract's" enforcement, must be unconscionably unconscionable. Unconscionability is itself, of course, an affirmative defense.

Scientology acknowledges that Judge Duryee herself declared the "contract" unconscionable because it called for punishment far beyond what Armstrong received.

The trial court initiated the concept that CSI's judgment must be limited to \$800,000. Even the fervent imaginations of

Armstrong and his counsel did not conjure up such an inappropriate argument. The issue was never briefed, and the trial court gave itself no opportunity to reflect upon the wisdom of its idea.

AOB, 17. Scientology is, however, wrong about Armstrong and his lawyer not contemplating this argument. In truth, Armstrong's fervent imagination *had* envisioned the very absurdity that leads to the very obscene unconscionability that Judge Duryee cannot but have observed in order to arrive at her judgment. Armstrong provided testimony about the monetary absurdity of the liquidated damages clause in his declaration in support of his opposition to Scientology's summary judgment filed March 9, 2004. RApp.256-274.

Since Scientology has affirmed and insisted that virtually any utterance by me that mentions Scientology or my thoughts about Scientology or any of the entities comprising the "beneficiaries" to the subject "contract is worth \$50,000.00, it is obvious that Scientology cheated me when it claimed it purchased my right and ability to make such utterances. If my Usenet post stating "I'll say \$1,500,000. That's my figure." [AApp.52:182] is worth \$50,000.00, then "I'll say \$1,500,001. That's my figure." is also worth \$50,000.00, as is "I'll say \$1,500,002. That's my figure." and "I'll say \$1,500,003. That's my figure." etc. I believe that I can generate utterances, orally and by computer and other communication media, that would have a value of trillions, or even quadrillions, or more dollars a day. Accepting Scientology's own monetary valuation of my utterances, the organization cheated me out of quintillions of dollars, or over a lifetime even sextillions of dollars, with its cruelly unfair peanuts "settlement" "payment." For Scientology to purchase my rights, ability and utterances that the organization claims it purchased, it would have to pay me what my potential utterances are worth, sextillions.

RApp.265

There is no doubt that Judge Duryee had read Armstrong's March 2, 2004 declaration, which contains testimony about this and other absurdities, about Scientology's impermissible and criminal deprivation of his

Constitutionally guaranteed rights and privileges, and about other Scientology behavior that shocks the conscience. She had in fact read Armstrong's declaration twice, and immediately prior to trial, because Scientology had moved to strike this very declaration, and she had studied the declaration to arrive at her denial of Scientology's motion. RApp.301,302.

Although attorney Greene had not approached the unconscionability of the liquidated damages clause precisely as Judge Duryee did, his fervent imagination was also well aware that it is unconscionable.

In the instant case, there is serious unconscionability in the procedural sense given the inequality of bargaining power between Scientology and Armstrong, as discussed above and set forth in greater detail; in Armstrong's separate statement. What is most obvious is the substantive unconscionability. It is clear that as Scientology seeks to have it enforced, the agreement is one-sided: Scientology can slander Armstrong and he must remain mute or get hit with a \$50,000 liquidated damage assessment: What is the possibl[e] justification for such a one-sided agreement? If you listen to Scientology, it is because Armstrong is a liar and fomenter of anti-Scientology litigation. But if what Scientology says is true, you must throw out the decision of Judge Breckenridge which has been affirmed on appeal in a published decision. That makes no sense. It makes no sense to accept the characterization of an organization that has a long recorded history of abuse of individuals and the legal system and to disregard a well-respected superior court judge.

Armstrong's Defendant's Opposition to Motion for Summary Adjudication on the Thirteenth, Sixteenth, Seventeenth, and Nineteenth Causes of Action, § IV. "The Liquidated Damages Provisions are Unconscionable," filed September 18, 1995, CT-A075027, 8248-8250

Any idea that Scientology is conveying that Judge Duryee's judgment of unconscionability was out of the blue is baseless. Her conscience must have been shocked, and she could not help but be troubled

by the light she must reflect with that judgment onto her former colleague in the Marin Court. That Judge Thomas had adjudged the “contract” reasonable and enforceable, and conscionable, and had used his authority to enforce it, when, no matter what Armstrong had done, was doing, or would do, the “contract” is patently unconscionable, would grieve any judge with a heart. The “contract” must have been to Judge Duryee *extremely* unconscionable given what she had to confront and transcend in order to render her judgment: the principles of res judicata and collateral estoppel, Scientology, and judging her fellow Marin County Judge, who had abetted the unconscionable almost a decade ago, by denying Armstrong a fair trial in which he could present his defenses, including unconscionability. Thus Judge Duryee’s unconscionability judgment is profound, and rendered by her only after considerable thought, and after a search of her conscience that Scientology’s “contract” had shocked.

Obviously even before the trial Judge Duryee had pondered the unconscionability of Scientology’s seeking in “damages” many times more than what Armstrong had received to dismiss his claims. She asked Scientology attorney Wilson about it even before she asked for opening statements.

The court: So here's my question. The contract between the parties was based on consideration of the church paying \$800,000 to Mr. Armstrong. So now we have subsequent actions where Mr. Armstrong continues to have monetary liquidated damages imposed against him for his violation of the settlement agreement. [] So what happens when we reach the point that he has an obligation to pay the Church more than what he received? What about that? How does that affect the rights between the parties?

Exs.16: 309 Wilson’s answer: “Doesn’t affect it at all.”

Later in the trial, attorney Greene responded to the Court’s question.

to your question about what happens when he accumulates enough liquidated damages hits to equal the consideration that he got, if that -- if there was no washout the injustice to Armstrong would be forever. Scientology could say whatever they want about him. He would be effectively gagged and tied. And if he refused to be gagged and tied, and if he made the choices to speak out and tell the truth as he knew it, the range of punishment for doing that would be limitless. That's just simply unfair and unjust. And based on the injustice exception to the rule of res judicata we would submit that this proceeding is worthy of a full hearing.

Exs.16:314,315 Judge Duryee agreed with Greene.

Also early in the proceeding, the Court obtained from Wilson two very important admissions that helped her to arrive at her unconscionability judgment: that Scientology's punishment of Armstrong with its "contract" would go on forever; and that other key "contractual" conditions relating to the liquidated damages clause were also completely one-sided.

Mr. Wilson: [Armstrong] bargained for the liquidated provision that provided for \$50,000 for each breach. That was in the nature of incentive for him not to breach.

The Court: So your position is once he made that deal he forever gave up his rights to speech against the church?

Mr. Wilson: He did.

Exs.16:309.

The agreement says that Armstrong can't say anything about the church and it doesn't say that the church can't say anything about Armstrong.

Exs.16:318 Greene then articulated the effect of such complete one-sidedness in Scientology's "contract."

what we have is Scientology attempting to employ a completely one-sided contract to be able to pound on Armstrong in court in the furtherance of their fair game policy that says that enemies of Scientology can be sued, lied to, tricked, or otherwise destroyed by Scientology without any adverse consequences.

Exs.16:319,320

After hearing opening statements on Scientology's motion to preclude Armstrong from introducing any evidence on his defenses, Judge Duryee called a recess to study the documents submitted in the matter.

I'm going to take this motion under submission. I'm going to take a closer look at some of the documents.

So don't go anywhere. I'm just going to go to my chambers and read some of these materials closer.

Exs.16:349

When she returned to the bench, Judge Duryee granted Scientology's motion for a directed verdict ruling that Armstrong's defenses had been previously litigated so he had none. She also said stated:

the court has listened to the opening statements of the defense. [Exs.16:328-344] And even if those things were proven to be true, there is no ambiguity in the settlement agreement. And defendant, in accepting that money, did undertake to abide by the terms and conditions of the settlement agreement. And that particular provision was not bilateral, it was unilateral. So that even if the church said horrible things about Mr. Armstrong, he is not justified to violate the terms of the settlement agreement, but would have other remedies under the law.

Exs.16:350.⁵

⁵ The horrible things that Scientology and the individuals serving its purposes have done to and published about Armstrong also would shock any decent person's conscience. See, e.g., excerpted Usenet postings, Ex. D to Armstrong's March 2, 2004 declaration. RApp.133-153: "fled the United States because there is a warrant out for his arrest" RApp.134; "had himself photographed by a newspaper naked" RApp.134; "a liar. He never worked with [Hubbard]" RApp.135; "Gerry Armstrong is one big fraud and very stupid" RApp. 135; "He took those documents in secret cooperation with criminal infiltrators of Scientology that forged the documents;" RApp.135; "one sick, deranged, twisted fuck like you" RApp.137; "a loathsome coward" RApp.138; "Once Gerry has had his fill using Caroline [Armstrong's wife], he'll unceremoniously dump her" RApp.138; "operating like a brainwashed cultist" RApp.139; "Mentally unsound individuals like Gerry Armstrong" RApp.140; "you're nothing more than a hypocritical blowhard" RApp.142; "[Armstrong's wife Caroline will] be viewed as yesterday's rubbish by the scam artist" RApp.144; "Gerry

Judge Duryee then declared Scientology's effort to punish Armstrong beyond what the benefit was that was conferred on him unconscionable, and awarded Scientology \$500,000 in liquidated damages. Since Scientology had been awarded \$300,000 in liquidated damages by Judge Thomas in his judgment, Judge Duryee's award gave Scientology a total of \$800,000 in judgments, the amount it claimed to have paid Armstrong to settle his lawsuit and other claims against Scientology and the "contract's" other beneficiaries.

Wilson stated during the trial that Scientology just wanted its money back, and would rescind the "contract" if it got its money.

I can tell you that if Mr. Armstrong today would like to pay the money back we'll rescind the agreement. I mean this is not about the church of Scientology trying to be punitive. This is about the church of Scientology trying not to be a victim.

Exs.16:323

Judge Duryee questioned Wilson about the apparent contradiction in the damages Scientology was seeking.

The Court: You're asking for monetary damages for 131 postings and you're also saying that if Mr. Armstrong wants to give the church the money back the church will rescind the agreement?

Mr. Wilson: That's right.

Exs.16:326

When Wilson protested Judge Duryee's limiting liquidated damages to what was conferred on Armstrong, she again questioned Wilson about Scientology's willingness to rescind its "contract," and associated her monetary judgment with rescission.

Armstrong is a cad and a bounder who can not be relied on for behavior befitting a decent human being" RApp.146; "a fucking liar" RApp.146; "a thin-skinned paranoid egomaniac with zero sense of humor" RApp.149; "Gerry's insanity" RApp.150; "self-destructing" RApp.150; "Gerry Armstrong's logic doesn't meet any of the minimal standards to so qualify" RApp.151.

The Court: But you told me that the church was willing to discharge the --

Mr. Wilson: We would rescind the agreement.

The Court: Rescind the agreement if he gave you the money back. The courts are not responsible for collection. All we can do is issue orders. But given the church's position I think returning to the church the benefits that were conferred to Mr. Armstrong reaches the same result.

Exs.16:354

In Scientology's opening brief there is no mention of Wilson's representation to the trial court that Scientology only wanted its money back and would rescind its unconscionable contract if it got the money it was awarded.

As Scientology says in its writ petition, following the April 9, 2004 trial, Wilson and Greene submitted to the Court different proposed orders on the trial rulings. Petition, 12. On May 20, 2004, the Court issued its own Order Granting Plaintiff's Motion for Judgment. Judge Duryee thus had 40 days to reflect upon the wisdom of her judgment of unconscionability in this case before she confirmed it in writing. Nevertheless, she did not waiver in the certainty of her judgment.

Mr. Armstrong received a benefit under the settlement agreement of \$800,000. It would be unconscionable to punish him beyond what the benefit was that was conferred to him. Armstrong was previously sanctioned in the sum of \$300,000. Judgment is therefore entered for plaintiff, on the admitted violations, of \$500,000.

Exs.18:361

The following appears to be a very good statement on unconscionability as the term is used in contract law:

Under California law, unconscionability has both a procedural and substantive element: the procedural element of unconscionability focuses on oppression, which arises from an inequality of bargaining power that results in no real negotiation and an absence of meaningful choice, or surprise, which involves the extent to which the supposedly agreed-

upon terms are hidden in a prolix printed form drafted by the party seeking to enforce them, while the substantive element of unconscionability traditionally involves contract terms that are so one-sided as to shock the conscience or that impose harsh or oppressive terms.

Ting v. AT & T, N.D.Cal.2002, 182 F.Supp.2d 902, affirmed in part, reversed in part 319 F.3d 1126, certiorari denied 124 S.Ct. 53, 157 L.Ed.2d 24, 2003 WL 1988529.

California law also addresses the relationship of procedural to substantive elements of unconscionability:

Although both procedural and substantive unconscionability must be present before a contract or contract provision is rendered unenforceable on grounds of unconscionability, those elements are reviewed in tandem such that the greater the degree of substantive unconscionability, the less the degree of procedural unconscionability that is required to annul the contract or clause.

Kinney v. United HealthCare Services, Inc. (App. 4 Dist. 1999) 83 Cal.Rptr.2d 348, 70 Cal.App.4th 1322.

Scientology might argue that because Armstrong was prevented by res judicata from putting on his defenses, and therefore prevented from presenting evidence as to *why* he signed the “contract,” Judge Duryee could not know anything about oppression, Scientology’s and Armstrong’s relative bargaining power, no negotiation, or no meaningful choice; so the necessary procedural unconscionability could not be present. But Judge Duryee had listened to Greene, and she had read Armstrong’s March 2, 2004 declaration in opposition to Scientology’s summary judgment motion, which provides more than sufficient procedural unconscionability, to go with the obvious substantive unconscionability that shocked her conscience, to support her conclusion and judgment of unconscionability.

She knew what Armstrong was stating about no real negotiations, and knew he had been stating it for almost 15 years.

there was absolutely no negotiation by me with Scientology, or even via Flynn with Scientology, regarding liquidated damages and no discussion whatsoever regarding their reasonableness. It was completely understood by me at the time of the settlement that the liquidated damages condition and amount were utterly unreasonable. I am certain that they are just as unreasonable today, and, I believe, even more unreasonable given the now obvious conclusion that this liquidated damages condition, its enforcement by Judge Thomas, and every way in which it has been used by Scientology against me and against others, constitute acts in furtherance of serious civil rights crimes.

Declaration, March 2, 2004, RApp.264.

Armstrong also described the oppression:

At the time of the December 1986 "settlement," my attorney Michael Flynn told me that if I didn't sign Scientology's "contract," Scientology would continue to Fair Game me, Flynn and his family, the other Scientology victims that Flynn represented, and Fair Game anyone else Scientology wanted. I knew very well what Fair Game was, and understood very well the terrible threat that Scientology was making. I have described this duress in my sworn Complaint Report, Ex. A, p. 37, para. 123

The burden of having to sign Scientology's onerous, indeed impossible, "contract" in order to have the organization stop its fair game attacks on my attorney and his family, on his clients, on my friends, on the rest of humanity, and on myself, was unbearable.

RApp.262.

Armstrong also provided his knowledge of the bargaining power of Scientology in relation to his own bargaining power.

At the time of the "settlement," Scientology was a billion dollar enterprise, whereas I had no money whatsoever and no bargaining power. Scientology had hundreds of lawyers. My lawyer had been compromised by Scientology to the point that he was pressuring me on Scientology's behalf to sign the "contract" to have Fair Game end against him and his family, assuring me that Scientology would end Fair Game forever if

signed, and also insisting that the liquidated damages condition was not worth the paper it's printed on. RApp.266.

Even if Judge Duryee had not known any of the facts about the circumstances when the "contract" was made, its terms are so one-sided as to shock the conscience, and harsh, and oppressive. It is obvious that she found the liquidated damages clause oppressive because she acted to limit the application of that clause. The clause that Scientology wants this Court to enforce, by which Scientology could collect astronomical sums from Armstrong for the rest of his life, and chase him around the galaxy, is clearly oppressive, and the result of enforcement would be unconscionable.

Judge Duryee zeroed in on the "contract's" utter one-sidedness, and declared it unilateral just before rendering her judgment. Scientology, and all the beneficiaries including attorney Wilson, can say all the horrible things they want about Armstrong, and Armstrong can say nothing about any of them. Scientology gets \$50,000 from Armstrong per utterance, which Scientology's attacks precipitate, and Armstrong gets nothing from Scientology or the beneficiaries when they run global black PR campaigns against him. Scientology also says that there is no limit to how many utterances it can collect for, and enforcement of the liquidated damages clause would continue until Armstrong's death. Acting oblivious to their "contract's" flaming unconscionability, Scientology was suing Armstrong in the Marin Court for ten million dollars for two hundred utterances.

Scientology contends:

the trial court's conclusion that it would be "unconscionable" for CSI to recover cumulative damages an amount in excess of what it paid Armstrong under the terms of the contract is without legal support or merit. A liquidated damages provision that has already been adjudicated as reasonable and enforceable cannot become unconscionable just because one party to the contract decides to commit several hundred willful breaches.

AOB, 17.

CCC §3359 completely supports the trial court's conclusion.

Damages must, in all cases, be reasonable, and where an obligation of any kind appears to create a right to unconscionable and grossly oppressive damages, contrary to substantial justice, no more than reasonable damages can be recovered.

Armstrong does not accept that *any* damages are reasonable. It appeared to Judge Duryee, however, that the "contract" created a "right" for Scientology to unconscionable and grossly oppressive damages, in the millions, billions or trillions of dollars, and thus, applying CCC §3359, she limited damages to the "reasonable" amount of what Armstrong in 1986 received to dismiss his claims.

The "contract's" liquidated damages clause did not become unconscionable because Armstrong decided to commit several hundred, or hundreds of thousands of breaches. The clause was unconscionable when the "contract" was made.

III. The Liquidated Damages Are, But May Not Lawfully Be, Punishment

Wilson asserts that Armstrong did not consider Scientology's liquidated damages awards against him punishment.

Mr. Wilson: [Armstrong] needs to be punished for that or else what you're saying is that anybody can do it.

The Court: Some people might consider a \$800,000 judgment against them to be punishment.

Mr. Wilson: Mr. Armstrong doesn't. He told you he doesn't. He told you he's going to keep doing it.

Exs.16:352,353. This is false, and proven false by everything Armstrong has said or written about Scientology's "religious" persecution and punishment of him from the day he was compelled to sign the "contract." The monetary judgments Scientology obtained are punishment, the jail

sentences and fines are punishment, forcing Armstrong into bankruptcy is punishment, and the “contract’s” clauses that he cannot but breach are punishment. That Scientology’s punishing of Armstrong has not resulted in his being silenced about Scientology and its punishment is no evidence whatsoever that the punishment is not punishment.

In a wicked twist of logic, Scientology argues that because the law does not permit liquidated damages to be punishment, the punishment that its liquidated damages clause subjects Armstrong to cannot be punishment; otherwise the liquidated damages would be punishment, which liquidated damages cannot by law be.

The trial court erred in confusing cumulative judgments exceeding \$800,000 with punishment because, as a matter of law, liquidated damages are not and cannot be punishment. The trial court also had no authority to limit CSI's recovery under the liquidated damages provision by characterizing it as "unconscionable." A reasonable, enforceable liquidated damages provision is, by definition, not unconscionable.

AOB, 11

Scientology is correct that liquidated damages cannot be punishment. That Scientology’s liquidated damages clause acts as punishment means it cannot be a lawfully enforceable contractual term. It cannot possibly mean, as Scientology insists, that because the liquidated damages clause is a liquidated damages clause the punishment it inflicts cannot be punishment because the law does not permit liquidated damages to be punishment.

Scientology’s argument that its liquidated damages provision cannot now be unconscionable because Judge Thomas said in 1995 that it was “reasonable” and “enforceable” is equally spurious. The import of the liquidated damages provision now being adjudged unconscionable is that Judge Thomas’ findings of reasonableness and enforceability were erroneous. It would be ridiculous and result in a terribly unconscionable

result if unconscionable contract terms that shocked a judge's conscience with their one-sidedness and oppressiveness must nevertheless be enforced because some other judge, whose conscience was *not* shocked by the one-sidedness and oppressiveness, earlier ruled the terms were reasonable and enforceable. Scientology in fact may not use Judge Thomas' 1995 judgment to "prove" the "contract's" conscionability because unconscionability is determined from evidence as to the "contract's" commercial setting, purpose and effect at the time the "contract" was made, December 1986.

Supporting Judge Duryee's judgment, Los Angeles Superior Court Judge Geernaert, who had inherited the first *Scientology v. Armstrong* case, C 420153, after Judge Breckenridge retired, and to whom Scientology went in 1991 to enforce its "contract," before going to Marin County, obviously had *his* conscience shocked, and stated in effect that Judge Breckenridge's conscience would *also* have been shocked by Scientology's "contract."

So my belief is Judge Breckenridge, being a very careful judge....if he had been presented that whole agreement and if he had been asked to order its performance, he would have dug his feet in because that is one I'll say one of the most ambiguous, one-sided agreements I have ever read. And I would not have ordered the enforcement of hardly any of the terms if I had been asked to, even on the threat that, okay the case is not settled.

I know we like to settle cases. But we don't like to settle cases and, in effect, prostrate the court system into making an order which is not fair or in the public interest.

Transcript of 12/23/91 hearing, CT-A075027, 7700) Judge Duryee's 2004 judgment of unconscionability is confirmation of Judge Geernaert's 1991 ruling, and a strong indication that Judge Thomas' 1995 order, as Judge Geernaert warned, had prostrated the court system, was not fair, and not in the public interest.

Scientology as much as admits the liquidated damages it seeks are punishment in its writ petition.

Judge Duryee vacated the two prior sentences of contempt previously issued by Judge Thomas in the Action, on the ground that the new judgment in the Related Action for \$500,000 in compensatory damages (which Armstrong is utterly incapable of paying) was punishment enough

Petition, 11. Armstrong is even more utterly incapable of paying \$10,050,000. But Scientology doesn't want the money; it wants punishment. Armstrong may be able to discharge the \$500,000 in bankruptcy, or the \$10,050,000. But if liquidated damages are not limited, Scientology can keep filing lawsuits, on which there is no limit, and Armstrong, who cannot but breach Scientology's "contract," could not discharge any monetary judgments by bankruptcy, because bankruptcy law permits him to seek bankruptcy protection only every seven years. Scientology would thus achieve the unlawful purpose of its liquidated damages of punishing Armstrong into financial obliteration.

Armstrong's arguments relating to unclean hands, free religious exercise, criminal deprivation of rights, and arithmetic absurdities are presented in his opposition to Scientology's writ petition in Case No. A107095 and incorporated herein by reference.

CONCLUSION

The terms in its "contract" that Scientology seeks to enforce have been adjudged unconscionable. Scientology's legal remedy is to submit to a hearing prescribed by CCC §1670.5. Armstrong also requests such a hearing for himself, which he is to be afforded.

Or, because of Scientology's unclean hands herein, and because of the grotesque unconscionability of its "contractual" terms, and their clear violations of public policy, Armstrong's civil rights, and U.S. criminal

statutes, this Court has the authority to act to declare those terms unlawful and to prevent Scientology from any further judicial actions to enforce these terms.

Dated: December 1, 2004

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CERTIFICATE OF LENGTH

Pursuant to Rule 14(c)(1) of the California Rules of Court, respondent Gerry Armstrong certifies that the number of words in this brief, according to the word count of the computer program used to prepare the brief, is 13,999 words.

Gerry Armstrong

PROOF OF SERVICE

I am employed in the Province of British Columbia, Canada. I am over the age of eighteen years and am not a party to the above-entitled action. My business address is #1-45950 Alexander Avenue, Chilliwack, B.C. V2P 1L5.

On December 1, 2004 I served the following documents:

**RESPONDENT'S BRIEF and
RESPONDENT'S APPENDIX, VOLS, I, II, III & IV**

on the following persons on the date set forth below, by placing true copies thereof enclosed in sealed envelopes addressed as stated on the service list, as follows:

XX By Mail

I caused such envelope with postage thereon fully prepaid to be placed in the Canadian mail at Chilliwack, B.C., Canada.

Andrew H. Wilson, Esq.
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Clerk of the Superior Court
Marin County Superior Court
3501 Civic Center Drive
San Rafael, CA 94913
U.S.A.
(Hon. Lynn Duryee)

California Supreme Court (5 copies of brief)
350 McAllister Street
San Francisco, CA 94102

I declare under penalty of perjury under the laws of Canada, the United States, and the State of California that the above is true and correct.

Executed on December 1, 2004 at Chilliwack, B.C., Canada

Caroline Letkeman

(Signature)